

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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DIVISION 1181 AMALGAMATED TRANSIT  
UNION - NEW YORK EMPLOYEES PENSION  
FUND and its TRUSTEES

**MEMORANDUM & ORDER**  
16-CV-5014 (DRH)(AKT)

Plaintiffs,

-against-

D & A BUS COMPANY, INC. and ANCHOR  
BUS CO., INC.

DefendantS.

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**HURLEY, Senior District Judge:**

Presently before the Court is the August 25, 2017 Report and Recommendation ("R&R") of Magistrate Judge A. Kathleen Tomlinson recommending that plaintiffs' motion for default judgment be granted in part and denied in part. More particularly, Judge Tomlinson recommended that (1) default judgment be entered against defendant D&A and plaintiffs be awarded (a) \$575,545.00 in withdrawal liability; (b) \$38,732.30 in accrued interest; (c) \$115,109.00 in liquidated damages; (d) \$3,806.00 in attorneys' fees; (e) \$846.03 in costs: and (f) the requested injunctive relief, to wit an injunction compelling D&A to provide plaintiffs with a complete list of each trade or business under its common control; and (2) the motion for default judgment against Anchor Bus. Co., In. be denied. More than fourteen days have elapsed since service of the R&R and no objections have been filed by defendants. Plaintiffs have filed objections limited to Judge Tomlinson's recommendation regarding Anchor Bus. Co., Inc. Unsure as to whether those claims would remain pending or dismissed under the R&R, Plaintiffs seek dismissal of the claims against Anchor Bus Co., Inc. without prejudice and have in fact filed

a notice of voluntary dismissal of the claim against Anchor Bus Co., Inc. pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i).

As Plaintiff's notice of voluntary dismissal is proper, the Court will dismiss the claims against defendant Anchor Bus Co., Inc. without prejudice.

Pursuant to 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72, this Court has reviewed the unobjection to portions of the R&R for clear error, and finding none, now concurs in both its reasoning and its result. The Court therefore adopts the August 25, 2017 R&R of Judge Tomlinson as to defendant D&A as if set forth herein.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiffs' motion for default judgment against defendant D&A Bus Company, Inc. is granted and plaintiffs are awarded: (1) \$575,545.00 in withdrawal liability; (2) \$38,732.30 in accrued interest; (3) \$115,109.00 in liquidated damages; (4) \$3,806.00 in attorneys' fees; (5) \$846.03 in costs; and (6) an injunction compelling defendant D&A Bus Company, Inc. to provide plaintiffs with a complete list of each trade or business under its common control within twenty (20) days of service of a copy of the judgment upon it; and

**IT IS FURTHER ORDERED** plaintiffs' claims against defendant Anchor Bus. Co., Inc. are dismissed without prejudice.

The Clerk of Court is directed to enter judgment accordingly and to close this case.

Dated: Central Islip, New York  
September 12, 2017

s/ Denis R. Hurley  
Denis R. Hurley  
United States District Judge